Next appellants contend that the government failed to prove that they traveled to Nebraska with the requisite intent. The argument is that the evidence shows that appellants traveled to Nebraska in search of livestock to purchase, and the subsequent gambling was merely a spur of the moment thing which was not an immediate purpose of the trip. While there was evidence that when appellants first met Flanagan they talked to him about purchasing some livestock, there was also testimony from O'Neal that O'Neal called Bridwell in Colorado and encouraged Bridwell to meet O'Neal in Nebraska to find some gambling. O'Neal's testimony also indicated that after the craps game with Flanagan, O'Neal received "courtesy money" from Bridwell as sort of a finder's fee for getting Bridwell into a game of craps. This evidence, together with the natural inferences that may be drawn therefrom, provided a sufficient basis for the jury to find that appellants traveled to Nebraska with the primary intent to engage in gambling as prohibited in §1952.

Appellants also believe that the evidence was insufficient because the government's case did not prove every point in the indictment which charged appellants with traveling interstate "with intent to promote, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity." As is apparent, the indictment charged appellants in the conjunctive while the statute reads in the disjunctive. However we do not believe that the government's proof of some but perhaps not all of the prohibited modes of violating the statute constitutes a

fatal defect in appellants' conviction. It is settled that where a crime denounced disjunctively in the statute is charged in the conjunctive, proof of any one of the allegations will sustain a conviction. 4/

We now turn to appellants' contentions concerning the admissibility of certain evidence. First, appellants object that their respective tax returns for 1966 were admitted into evidence although there was no showing by the government that the government had complied with 26 C.F.R. §301.6103(a)-1(h). The regulation in question governs the use of tax returns in litigation and requires that a United States Attorney seeking to use a return in litigation not involving revenue laws shall make written application for the return or copies thereof with the Commissioner of Internal Revenue. Appellants urge that the government's failure to prove conformity with the regulation is fatal error.

We find no prejudicial error resulting from the government's use of the tax returns. Even assuming that in fact the application was not made in conformity with the regulation, it is difficult to say that for this reason alone the returns were not admissible as evidence. The regulation in question appears to be an administrative procedure and is in no way related to

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4/ McGriff v. United States, 408 F.2d 333 (9th Cir. 1969); Rimerman v. United States, 374 F.2d 251 (8th Cir. 1967); Turf Center, Inc. v. United States, 325 F.2d 793 (9th Cir. 1963).

evidentiary rules governing the admissibility of evidence. The probative value of the returns as evidence in a courtroom is neither enhanced nor diminished by compliance with the regulation. We cannot conclude that otherwise admissible tax returns became inadmissible simply because the government did not bother to show in its case that, indeed, written application had been made to use the returns.

Appellants further argue that it was error to admit the returns into evidence because, according to appellants, the jury may have inferred tax evasion due to the fact that the income reported on their returns was at odds with the evidence of their gambling winnings in 1966. While it is true that in certain cases such as South v. United States, 368 F.2d 202 (5th Cir. 1968) evidence is inadmissible if it tends to prove an unrelated offense this case does not fall into that category. In South v. United States, supra, tax returns were admitted in a §1952 prosecution solely to show the accused's reported income. From the accused's nominal reported income, which was manifestly too small to live on, the government sought to argue that the accused must have had additional unreported income from illegal gambling sources. The court in South, in a well reasoned opinion, determined that proof of the accused's meager reported income was probative of nothing related to the gambling offense in question. But the tax returns, coupled with the prosecutor's remarks, were highly suggestive of tax evasion although that was not an offense being tried.

Our case is in a significantly different

posture. Beyond the fact that appellants did not object to the admission of the tax returns at trial, Bridwell and Pauldino's returns were admitted solely to show that on appellants' respective 1966 returns each claimed that his occupation was gambling. Income reported on their returns was not referred to at trial, and in fact the reported incomes on the exhibits were not insubstantial so as to immediately suggest tax evasion. In summary, the tax returns were probative evidence on the issues tried, and unlike the situation in South, no intimation was made to the jury that appellants were at least guilty of tax evasion. Hence it is unreasonable to assume that the jury improperly used the evidence in coming to their guilty verdict.

In a similar vein, appellants raise a question whether it was proper to admit the testimony concerning their gambling activities prior to and after their Nebraska trip. While, as we have indicated above, evidence of illegal activities other than the ones charged is not ordinarily admissible, there is an exception if the evidence establishes a course of conduct, scheme, design or intent. 5/ In this regard, we think there is no question but that the evidence had probative value as proof that appellants were engaged in gambling as a continuous enterprise. The trial judge instructed the jury that they should consider the evidence

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5/ Havelock v. United States, 427 F.2d 987 (10th Cir. 1970); United States v. Eagleston, 417 F.2d 11 (10th Cir. 1969).

only for resolving the question of whether appellants were engaged in gambling as a business. The evidence was properly admitted. 6/

Tacking a different course, appellants also object to the testimony about their gambling activities outside Nebraska as contrary to the trial court's pre-trial order that neither appellant's criminal record should be brought out in the government's case. Appellants now contend that the evidence concerning their gambling activities outside Nebraska was tantamount to evidence of their prior criminal records. Appellants' contention is specious. The evidence in this case made no mention of appellants' criminal records, nor is this case comparable to cases where, for instance, mug shots were introduced which indirectly, if not directly, inferred the accused's previous trouble with the police. Our reading of the record discloses no subterfuge resorted to by the prosecution to inform the jury that appellants had police records. 7/

Further argument is made that it was error to admit the FBI agent's testimony that as far back as 1953 Bridwell was a gambler. Appellants urge that the remoteness in time from the charged offense negates the probative value of this evidence. If there be error in this respect, it staggers the imagination to believe

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6/ See Collins v. United States, supra.

7/ Cf. Dillon v. United States, 391 F.2d 433 (10th Cir. 1968).

that this bit of testimony in the course of the whole trial had any substantial influence on the jury's verdict. Only errors which affect substantial rights are prejudicial and require reversal. 8/

It is argued that the trial court erred in failing to grant appellants' motion for severance. As previously indicated, at trial the government produced extensive testimony concerning Bridwell's gambling activities in Canada. Pauldino was not involved in those activities, and he believes that nevertheless the jury may have considered that evidence as proof of his guilt. We are not persuaded by this argument. It is well settled that there is nothing per se improper about admitting evidence relating to one co-defendant but not relating to other co-defendants. 9/ In view of the trial court's cautionary instruction that the evidence was applicable only to Bridwell and not applicable to Pauldino, we do not believe that its admission prejudiced Pauldino in the eyes of the jurors. The evidence was presented merely to establish Bridwell's gambling occupation and to support the other evidence that the trip to Nebraska was for the purpose of gambling and not for the purpose of buying livestock. There was already a wealth of evidence establishing the same facts concerning Pauldino. In sum we are not convinced

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8/ Havelock v. United States, supra.

9/ Opper v. United States, 348 U.S. 84 (1954); Dillon v. United States, supra.

this evidence was misused by the jurors and influenced them in reaching their verdict against Pauldino. Hence we can find no clear abuse of discretion in denying separate trials.

We now turn to the contention that there was no evidence that Pauldino traveled to Nebraska with intent to engage in gambling. Without question, there was no direct evidence proving either Bridwell or Pauldino's intent when they made the trip. However, the circumstances of O'Neal's call to Bridwell and the payoff to O'Neal are grounds to infer Bridwell's requisite intent. Further evidence connecting Pauldino with Bridwell in other gambling escapades, plus Pauldino's acknowledged sole occupation as a gambler, provides sufficient circumstantial evidence of Pauldino's intent in traveling to Nebraska. The conduct of Pauldino within a reasonable time before and after the trip are circumstances which the jury could rightly consider in determining intent, motive or purpose. 10/

Lastly, appellants submit that it was error to allow the witnesses who testified about the gambling episodes in Washington and Canada to further testify that appellants cheated on those occasions. Appellants complain that the evidence of whether they cheated was irrelevant to the charge and highly prejudicial. Having closely read the record,

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10/ Brooks v. United States, 309 F.2d 580 (10th Cir. 1962).

we believe that the evidence of cheating on those occasions tied in with the testimony that in their game with Flanagan, appellants never bet against each other and would always bet against Flanagan and his friend. In short, the evidence showed all the more clearly that appellants were professional gamblers and that the Nebraska incident was just a typical episode in their larger effort to make a livelihood from illegal gambling throughout the country.

Affirmed.

APPENDIX B

MAY TERM - JULY 1, 1971

Before Honorable Jean S. Breitenstein, and Honorable Delmas C. Hill, Circuit Judges; and Honorable Edwin Langley, District Judge.

UNITED STATES OF AMERICA,	]	
	]	
Plaintiff-Appellee,	]	
	]	
v.	]	No. 333-70
	]	
JESS RAYMOND BRIDWELL, aka Ray Bradley,	]	
	]	
Defendant-Appellant.	]	

Upon consideration of petition of appellant for rehearing, it is ordered that said petition be and is hereby denied.

APPENDIX C

MAY TERM - JULY 1, 1971

Before Honorable David T. Lewis, Chief Judge; and Honorable Delmas C. Hill, Honorable Oliver Seth, Honorable William J. Holloway, Jr., Honorable Robert H. McWilliams, Honorable James E. Barrett and Honorable William E. Doyle, Circuit Judges.

UNITED STATES OF AMERICA,	]	
	]	
Plaintiff-Appellee,	]	
	]	
v.	]	No. 333-70
	]	
JESS RAYMOND BRIDWELL, aka Ray Bradley,	]	
	]	
Defendant-Appellant.	]	

Upon consideration of petition of appellant for rehearing en banc, it is ordered that said petition be and is hereby denied.